

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of	)	
	)	
KAUAI ISLAND UTILITY COOPERATIVE	)	Docket No. 2020-0218
	)	
For Approval of Power Purchase Agreement	)	
with AES West Kauai Energy Project, LLC	)	
and to Include Costs in Kauai Island Utility	)	
Cooperative's Energy Rate Adjustment	)	
Clause, and Other Matters Related to the	)	
West Kauai Energy Project.	)	
_____	)	

**KAUAI ISLAND UTILITY COOPERATIVE'S REPLY STATEMENT OF POSITION TO  
DIVISION OF CONSUMER ADVOCACY'S STATEMENT OF POSITION**

**AND**

**CERTIFICATE OF SERVICE**

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**KAUAI ISLAND UTILITY COOPERATIVE'S REPLY STATEMENT OF POSITION TO  
DIVISION OF CONSUMER ADVOCACY'S STATEMENT OF POSITION**

KAUAI ISLAND UTILITY COOPERATIVE ("KIUC"), by and through its attorneys,  
Schneider Tanaka Radovich Andrew & Tanaka, LLLC, hereby submits this Reply  
Statement of Position to the DIVISION OF CONSUMER ADVOCACY's ("Consumer  
Advocate") Statement of Position filed in the subject docket ("Statement of Position").<sup>1 2</sup>  
This Reply Statement of Position ("Reply") is being filed in accordance with Order  
No. 37733 Adopting Statement of Issues and Procedural Order, issued by the  
Commission on April 15, 2021 in the subject docket.

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<sup>1</sup> Any capitalized terms used, but not defined herein, shall have the same meanings ascribed to such terms in the Application filed in this docket on December 31, 2020 ("Application").

<sup>2</sup> The Consumer Advocate's Statement of Position was filed on July 2, 2021. However, to address certain information contained in that filing that was intended to be confidential but was inadvertently publicly disclosed, the Consumer Advocate filed a complete and properly redacted public version of its Statement of Position as Exhibit "A" to its Motion to Seal filed on July 6, 2021 in the subject docket. The complete and un-redacted confidential, non-public version of the Consumer Advocate's Statement of Position was provided as Exhibit "B" to said Motion to Seal, subject to the terms of Protective Order No. 37605, issued on February 4, 2021 in the subject docket.

## **I. REPLY**

### **A. Consumer Advocate Conditions and Recognition of Project Benefits.**

In its Statement of Position, the Consumer Advocate recommends that the Commission approve KIUC's requested relief with the conditions discussed therein (hereafter referred to as the "Consumer Advocate Conditions").<sup>3</sup> Specifically, the Consumer Advocate recommends that the Commission:

1. Approve, pursuant to Hawaii Revised Statutes ("HRS") § 269-27.2, the Power Purchase Agreement ("PPA") between Kauai Island Utility Cooperative ("KIUC" or the "Company") and AES West Kauai Energy Project, LLC ("AES");
2. Find that the energy charges, capacity charges, and other payments to be made by KIUC under the PPA are just and reasonable;
3. Find that the purchased power arrangements (e.g. terms and conditions) under the PPA are prudent and in the public interest;
4. Authorize, pursuant to HAR § 6-60-6(2), the inclusion of the costs (including applicable taxes and assessments) to be incurred by KIUC under the PPA in KIUC's Energy [Rate] Adjustment Clause ("ERAC"), to the extent that such costs are not recovered in KIUC's base rates, except for any costs related to curtailed energy;
5. Approve, pursuant to Section 2.3.g.2 of the Commission's General Order No. 7, the commitment and expenditure of funds for the New Overhead Circuit and Conductor Work so that all electrical output from the West Kauai Energy Project can be delivered to KIUC's system and in a dispatchable manner through the existing 57.1 kV transmission line;

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<sup>3</sup> Statement of Position, at 69. See also id., at 1.

6. Determine, pursuant to HRS § 269-27.6, that the New Overhead Circuit should be placed, constructed, erected, and built above the surface of the ground; and
7. To the extent the Commission determines that its approval under HRS § 269-19 or otherwise is required, approve that KIUC (a) transfer the Development Assets pertaining to the West Kauai Energy Project, and (b) convey, sublet, sublicense, assign or otherwise transfer, in whole or in part, any rights that KIUC may have with respect to the West Kauai Energy Project under any lease, license, contract, easement, right of entry, permit, authorization and/or other agreement or document, including without limitation the Project Subleases and Sublease(s), to AES in furtherance of AES's efforts toward the development and construction of the West Kauai Energy Project, under the terms set forth in the Development Agreement.<sup>4</sup>

The following are the Consumer Advocate Conditions recommended in the Consumer Advocate's Statement of Position:

- [T]he Consumer Advocate recommends that similar to the conditions imposed in Decision and Order No. 33557, issued on February 26, 2016, in Docket No. 2015-0331, in Decision and Order No. 34723 issued on July 28, 2017, in Docket No. 2017-0018, and Decision and Order No. 35538 issued on June 20, 2018, in Docket No. 2017-0443, as a condition to approval of the proposed PPA, KIUC should be required to file with the Commission and Consumer Advocate copies of all AES invoices related to the engineering, procurement, construction, and maintenance associated with the PV/BESS Facility no later than sixty (60) days after the commercial operation date. In addition, KIUC should be required to provide copies of AES' income statements or results of operations related to the PV/BESS Facility. That will allow the Commission and Consumer Advocate to better understand Hawaii-specific project costs, and better evaluate the proposed pricing in future PPA applications by means of cost benchmarking. Should these conditions be adopted, such filings should be

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<sup>4</sup> Id., at 2-3.

treated as confidential information and shall be filed under seal.<sup>5</sup>

- As community engagement should be ongoing, the Consumer Advocate recommends that KIUC and AES provide and/or support venues for community feedback and also compile past and ongoing outreach efforts, to the extent possible, into a single “living” document to reflect the concerns that have been raised, responses provided or changes made, and any ongoing dialogue between AES/KIUC and community members.<sup>6</sup>
- Consumer Advocate requests that updated sales and the [West Kauai Energy Project's] contribution to KIUC's RPS during its initial twenty-five-year term be provided upon completion of KIUC's updated load forecast.<sup>7</sup>
- If, for whatever reason, there is curtailment that persists, the Consumer Advocate believes that requiring KIUC to report the curtailed amount and the associated costs would be a reasonable regulatory condition since, if such curtailment occurs, it is likely that KIUC would be tracking such information anyway. Subsequently, if the curtailment persists, it can be later determined whether regulatory action is required.<sup>8</sup>
- [T]he Consumer Advocate recommends that KIUC report any changes to the location of the substation.<sup>9</sup>
- [T]he Consumer Advocate requests that KIUC file copies of the documentation associated with the Development

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<sup>5</sup> Id., at 24-25.

<sup>6</sup> Id., at 41.

<sup>7</sup> Id., at 54.

<sup>8</sup> Id., at 55. As reflected herein, KIUC does not object to the Commission imposing the Consumer Advocate Conditions as regulatory conditions to the approval of the subject Application. KIUC intends to comply with this curtailment condition, if imposed by the Commission, by providing such information as part of its monthly report that is required by Findings and Conclusions Paragraph 19 of Decision and Order No. 33589 issued on March 14, 2016 in Docket No. 2014-0203.

<sup>9</sup> Statement of Position, at 57.

Assets with the Commission and Consumer Advocate at the time [KIUC] provides the documents to AES.<sup>10</sup>

In response, KIUC appreciates the Consumer Advocate's diligent review in this docket, and KIUC does not object to the Commission imposing any or all of the Consumer Advocate Conditions set forth above as regulatory conditions to the Commission's approval of the subject Application.<sup>11</sup>

In addition, KIUC also appreciates the Consumer Advocate's consideration and recognition in its Statement of Position of the various stated benefits that the Project will provide that are in the interests of KIUC, its members, the Kauai community and the public and State at large. These include, without limitation, the Consumer Advocate's consideration and recognition of:

- The Project's expected contribution of approximately 23.6% to KIUC's RPS in 2024 and 18.1% in 2048, based on KIUC's most recent load

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<sup>10</sup> Id., at 68.

<sup>11</sup> KIUC also notes that, on page 69 of its Statement of Position, the Consumer Advocate states:

[T]he Consumer Advocate recognizes that the Participants in this proceeding will also be filing statements of positions today that may raise other issues, as well as other issues that may be received in the other on-going proceedings related to the development of the [West Kauai Energy Project]. Thus, the Consumer Advocate recommends that KIUC address such issues, in its reply statement of position.

KIUC has engaged in certain informal communications with the Participants in this proceeding to discuss the issues raised by said Participants in their respective Statement of Positions. For the reasons discussed in KIUC's letter filed in the subject docket on the same day as this Reply, KIUC has requested Commission approval to amend the procedural schedule and enlarge the time to file its Rebuttal / Reply Statement of Position(s) (if any) to the Participants' respective Statement of Positions. To the extent any issues are resolved between KIUC and either or both of the Participants, KIUC intends to submit and discuss such resolution as part of its Rebuttal / Reply Statement of Position(s) or through some other settlement or stipulation document that may be entered into and filed by KIUC and the applicable Participant(s). For any issues that are not resolved, KIUC will respond and address such unresolved issues as part of its Rebuttal / Reply Statement of Position(s) to the Participants' respective Statement of Positions.

forecast, which is expected to result in KIUC achieving a 79% RPS by 2030;<sup>12</sup>

- The use of approximately 8.5 million fewer gallons of fuel annually as a result of the Project, amounting to approximately 212 million less gallons of fuel used over the initial 25-year term of the PPA, which in turn is expected to offset up to 118,361 MWh of oil-fired generation over a 12-month period (accounting for more than 60% of Kauai's oil-fired dispatched generation over a 12-month period);<sup>13</sup>
- The Project's ability to act as a firm resource while reducing fossil fuel consumption will reduce customer exposure to fuel price volatility and Kauai's (and the State's) fuel supply reliability risk;<sup>14</sup>
- The expected reduction in greenhouse gas ("GHG") emissions from the Project of approximately 2,018,487 MTCO<sub>2e</sub> for the Project's operation and 2,508,877 MTCO<sub>2e</sub> for the Project's lifecycle over twenty-five years;<sup>15</sup>
- Savings to KIUC's members/customers that are expected to be consistently delivered over the 25-year initial PPA term of the PV/BESS facility, and estimated by KIUC to total between \$157 million and

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<sup>12</sup> Statement of Position, at 14 and 53.

<sup>13</sup> Id., at 42.

<sup>14</sup> Id., at 43.

<sup>15</sup> Id., at 51.

\$172 million (net present value using a 5% discount rate) over said 25-year term;<sup>16</sup>

- The Project's ability to provide firm, dispatchable renewable energy to be delivered to KIUC's grid mainly during the evening peak, nighttime, and morning peak hours as well as during periods of cloud cover and rain;<sup>17</sup>
- The Project's ability to function as an energy storage resource with several advantages as compared to a BESS such as in terms of longer duration storage capability;<sup>18</sup>
- The use of a rotating synchronous generator that will provide increased inertia, voltage support and fault current compared to PV inverter-based projects, while noting KIUC's position that such non-fossil-fueled rotating synchronous generator capability will become more critical as KIUC operates for longer periods at 100% renewable energy;<sup>19</sup>
- The Project's ability to be black start and micro-grid capable;<sup>20</sup>
- The construction of the WKEP Substation in accordance with engineering standards for high water events may further protect KIUC's system from water inundation since KIUC's existing Mana substation is also within

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<sup>16</sup> Id., at 25-26.

<sup>17</sup> Id., at 13.

<sup>18</sup> Ibid.

<sup>19</sup> Id., at 14.

<sup>20</sup> Ibid.



Flood Zone A and the WKEP Substation will allow for the decommissioning of the Mana substation;<sup>21</sup>

- The Project's ability to assist in mitigating future flooding events through repairs to the Puu Lua, Puu Opae and Mana Reservoirs to bring them into compliance with Hawaii State Dam Safety Standards (also including the rehabilitation of related ditch infrastructure), which will greatly reduce the risk of a dam breach and will provide some level of protection for downstream lands, including the ability to drain the three reservoirs in the event of rising water levels;<sup>22</sup>
- The Project's provision of irrigation water delivery will support agriculture on lands adjacent to the Project site, while also increasing public access and recreational opportunities associated with the Puu Lua Reservoir;<sup>23</sup> and
- The Project's ability to support firefighting capabilities on the west side of Kauai and in Koke'e;<sup>24</sup>

KIUC also appreciates the Consumer Advocate's recognition of KIUC's various community engagement efforts in furtherance of the Project, including "a number of actions [that] have been taken to address certain concerns around water flow and potential impacts to farming operations and that KIUC considered various studies and

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<sup>21</sup> Id., at 31-32.

<sup>22</sup> Id., at 32.

<sup>23</sup> Id., at 32-33.

<sup>24</sup> Id., at 33.

stakeholder inputs in determining the amount of water released to the adjacent farming lands”,<sup>25</sup> as well as the Consumer Advocate’s acknowledgement of the information provided by KIUC explaining the negative impacts that would result if the Project is not built, as quoted by the Consumer Advocate on pages 33-34 of its Statement of Position as follows:

[I]f the Project is not built, KIUC anticipates the following negative impacts:

- The practical implementation of the diversion and delivery of water, repair of roads, and installation of electrical distribution to DHHL-managed mauka lands would not occur or would be the responsibility of DHHL, which is not part of DHHL’s 20-year plan, thus risking the viability of the lands for the foreseeable future.
- The rehabilitation and ongoing maintenance of the existing reservoirs and the Kokee Ditch would be the responsibility of the State, which could result in increased costs to the State or possibly lead to reservoirs being decommissioned and the ditch system falling into disrepair.
- The continued lack of maintenance and failure to bring the Puu Lua Reservoir up to current Hawaii State dam safety standards (e.g., Hawaii Dam and Reservoir Safety Act of 2007) could result in the decommissioning and draining of the reservoir. This would result in the elimination of a valued recreational trout fishing program and could jeopardize water availability between rain events to DHHL and other downstream users along the ditch system.
- The disrepair of the diversions and the Kokee Ditch would lead to reduced agriculture potential for thousands of acres of public lands on the west side of Kauai, as well as the lowering in value of a State-owned asset.
- Several planned stream and ditch gages, which are to be completed as part of the Project, would not be added to tributaries of the Waimea River and the Kokee Ditch.

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<sup>25</sup>

Id., at 40 (citations omitted).

- The existing unlined ditch from the Puu Moe Divide to the Puu Opae Reservoir would remain in place. This unlined ditch is in significant disrepair and irrigation to pastoral lots is only served by a pipe that runs down the middle of the road, which is not a reliable situation and is of concern to the water user and the Division of Forestry and Wildlife ("DOFAW"), which is the agency that maintains the road that is on DLNR land.
- Necessary road repairs would not be completed.

**B. Consumer Advocate's Other Suggestions.**

In addition to the Consumer Advocate Conditions, the Consumer Advocate's Statement of Position also contains the following statements that KIUC does not believe were intended to be regulatory conditions to be imposed by the Commission, but instead suggestions to KIUC:

- [T]he Consumer Advocate recognizes the speculative nature of any plan for decommissioning twenty-five years or more into the future. However, the Consumer Advocate nevertheless contends that having a basic plan or outline of a possible plan would provide some assurances that actions required to address concerns with acceptable disposal following the end of the Project's life as well as reflect a more accurate GHG emissions impact associated with decommissioning. Moreover, the Consumer Advocate has some concerns on who will ultimately bear the costs of decommissioning the interconnection facility, especially if KIUC will be able to assume ownership, and, therefore, will be responsible for its maintenance when the PPA concludes. Thus, the Consumer Advocate encourages KIUC to secure a more binding plan as it relates to decommissioning so that neither KIUC nor its members/customers will be left holding the bag when decommissioning is required.<sup>26</sup>
- The Consumer Advocate recognizes that estimation and evaluation of lifecycle GHG emission analyses is still an

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<sup>26</sup>

Id., at 52-53.

evolving process. As such, as it relates to future GHG analysis, the Consumer Advocate encourages KIUC to improve the processes and assumptions used to evaluate and present GHG impacts associated with future projects and operations in a consistent, objective and transparent manner.<sup>27</sup>

KIUC appreciates these suggestions from the Consumer Advocate, and KIUC does intend to (1) secure a more binding decommissioning plan at the appropriate time in the future,<sup>28</sup> and (2) adapt and improve its processes and assumptions used to evaluate and present GHG impacts associated with future projects and operations in a consistent, objective and transparent manner, as the estimation and evaluation of lifecycle GHG emission analyses continue to evolve over time and consistent with any requirements in effect at that time.<sup>29</sup>

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<sup>27</sup> Id., at 53.

<sup>28</sup> KIUC contends that the development of any decommissioning plan at any time in the near future for decommissioning actions that will not occur for over twenty-five years would be unduly speculative and could not reasonably be relied upon. For example, as discussed in the response to CA/KIUC-IR-33 filed on May 12, 2021 in the subject docket as part of KIUC's responses to the Consumer Advocate's First Submission of Information Requests, KIUC does not yet know what specific materials and equipment it will need or be required to remove from the Project site, such determinations will in large part be dictated by an end-of-life management plan to be developed by AES when end-of life programs have been defined and/or by the terms of the final land use agreements, and in any event, the cost of restoration and decommissioning the Project is included in the Project cost, which is the sole responsibility of AES and not KIUC.

<sup>29</sup> For example, KIUC notes that House Bill No. 561 was recently passed in the 2021 Hawaii Legislative Session, which amends HRS § 269-6(b) as follows (added text underlined; deleted text in brackets and with strikethrough – i.e., [–.–.]):

The public utilities commission shall consider the need to reduce the State's reliance on fossil fuels through energy efficiency and increased renewable energy generation in exercising its authority and duties under this chapter. In making determinations of the reasonableness of the costs [of] pertaining to electric or gas utility system capital improvements and operations, the commission shall explicitly consider, quantitatively or qualitatively, the effect of the State's reliance on fossil fuels on [price];

- (1) Price volatility [–.export];
- (2) Export of funds for fuel imports [–.fuel];
- (3) Fuel supply reliability risk [–.greenhouse]; and

## II. CONCLUSION

KIUC appreciates the Consumer Advocate's diligent review in this docket and the Consumer Advocate's consideration and recognition of the following stated benefits of the Project that are in the interests of KIUC, its members, the Kauai community and the public and State at large (each further detailed in Section I.A above): (1) the Project's RPS contribution; (2) approximately 8.5 million fewer gallons of fuel used annually that are expected to offset over 60% of Kauai's oil-fired dispatched generation over a 12-month period; (3) reduced exposure to fuel price volatility and fuel supply reliability risk; (4) significant reduction in GHG emissions, amounting to approximately 2,018,487 MTCO<sub>2</sub>e for the Project's operation and 2,508,877 MTCO<sub>2</sub>e for the Project's lifecycle over twenty-five years; (5) savings to KIUC's members/customers that are estimated by KIUC to total between \$157 million and \$172 million (net present value using a 5% discount rate) over the initial 25-year PPA term; (6) several benefits to KIUC's system and operations due to the Project's ability to act as a firm, dispatchable resource that will be black start and micro-grid capable with longer duration storage capability than BESS and a rotating synchronous generator that will become more critical as KIUC is able to operate for longer periods at 100% renewable energy; (7) the ability to assist in mitigating future flooding events and better protect KIUC's system from water inundation during high water events; (8) the provision of irrigation water

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(4) Greenhouse gas emissions.

The commission may determine that short-term costs or direct costs of renewable energy generation that are higher than alternatives relying more heavily on fossil fuels are reasonable, considering the impacts resulting from the use of fossil fuels. The public utilities commission shall determine whether such analysis is necessary for proceedings involving water, wastewater, or telecommunications providers on an individual basis.

delivery to support agriculture on adjacent lands while also increasing public access and recreational opportunities; and (9) the ability to support firefighting capabilities on the west side of Kauai and in Koke'e.

KIUC also appreciates the Consumer Advocate's consideration and recognition of the negative impacts that would result if the Project is not built as summarized in Section I.A above, KIUC's various community engagement efforts in furtherance of the Project, and the Consumer Advocate's ultimate recommendation that the Commission approve KIUC's requested relief, subject to the Consumer Advocate Conditions listed above.

KIUC has reviewed and analyzed the Consumer Advocate Conditions as set forth in Section I.A above, and KIUC does not object to the Commission imposing any or all of the Consumer Advocate Conditions as regulatory conditions to the Commission's approval of KIUC's requested relief set forth in the subject Application. To reiterate KIUC's requested relief as set forth in the Application, KIUC hereby respectfully requests that the Commission issue a final decision and order:

1. Approving, pursuant to HRS § 269-27.2, the PPA between KIUC and AES;
2. Finding that the energy charges, capacity charges, and other payments to be made by KIUC under the PPA are just and reasonable;
3. Finding that the purchased power arrangements (e.g., terms and conditions) under the PPA are prudent and in the public interest;
4. Authorizing, pursuant to HAR § 6-60-6(2), the inclusion of the costs (including applicable taxes and assessments) to be incurred by KIUC under the PPA in KIUC's ERAC, to the extent that such costs are not

recovered in KIUC's base rates, except for any costs related to curtailed energy;

5. Approving, pursuant to Section 2.3.g.2 of the Commission's General Order No. 7, the commitment and expenditure of funds for the New Overhead Circuit and Conductor Work so that all electrical output from the West Kauai Energy Project can be delivered to KIUC's system and in a dispatchable manner through the existing 57.1 kV transmission line;
6. Determining, pursuant to HRS § 269-27.6, that the New Overhead Circuit should be placed, constructed, erected, and built above the surface of the ground;
7. To the extent the Commission determines that its approval under HRS § 269-19 or otherwise is required, granting approval for KIUC to (a) transfer the Development Assets pertaining to the West Kauai Energy Project, and (b) convey, sublet, sublicense, assign or otherwise transfer, in whole or in part, any rights that KIUC may have with respect to the West Kauai Energy Project under any lease, license, contract, easement, right of entry, permit, authorization and/or other agreement or document, including without limitation the Project Subleases and Subeasement(s), to AES in furtherance of AES's efforts toward the development and construction of the WKEP, under the terms set forth in the Development Agreement; and
8. Granting such other relief as the Commission may deem applicable, required, just and/or reasonable under the circumstances and/or in order

for KIUC to perform and fulfill its obligations under the PPA, the  
Interconnection Agreement and/or the Development Agreement.

DATED: Honolulu, Hawaii, August 19, 2021.

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## CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was duly served upon the following party and participants electronically to the email addresses shown below pursuant to HAR § 16-601-21(d), as modified by Order No. 37043 Setting Forth Public Utilities Commission Emergency Filing and Service Procedures Related to COVID-19, filed on March 13, 2020.

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DATED: Honolulu, Hawaii, August 19, 2021.

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PUBLIC UTILITIES  
COMMISSION

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